

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

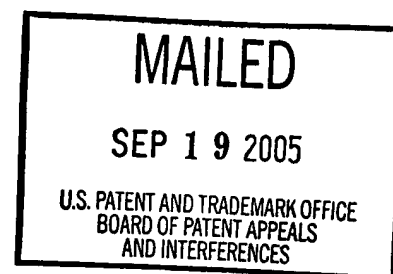
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ATM SHAFIQUL KHALID
and BARRY BOND

Appeal No. 2005-2147
Application No. 09/665,214

ON BRIEF



Before KRASS, JERRY SMITH, and SAADAT, Administrative Patent Judges.

SAADAT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the Examiner's final rejection of claims 1-40, which are all of the claims pending in this application.

We reverse.

BACKGROUND

Appellants' invention is directed to using a common configuration data structure which promotes compatibility and interoperability between differing versions of program modules. An understanding of the invention can be derived from a reading of exemplary independent claim 1, which is reproduced as follows:

1. A method for controlling access to storage loci in a common configuration data structure, the method comprising:

receiving an attempt to access a first storage locus in the common configuration data structure from a program module;

determining whether to direct such attempt to at least a second locus in the common configuration data structure with the program module unaware that it is accessing the second locus.

The Examiner relies on the following references in rejecting the claims:

Richman et al. (Richman)	5,655,148	Aug. 5, 1997
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Hester et al. (Hester)	6,105,101	Aug. 15, 2000
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Claims 1, 2, 5, 6, 8, 9, 11-13, 15, 16, 18, 19, 21, 24-26, 28-35 and 37-39 stand rejected as being anticipated by Hester.

Claims 3, 4, 7, 10, 14, 17, 20, 22, 23, 27, 36 and 40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hester and Richman.

Rather than reiterate the opposing arguments, reference is made to the briefs and answer for the respective positions of Appellants and the Examiner. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellant could have made but chose not to make in the brief have not been considered (37 CFR § 41.67(c)(1)(vii)).

OPINION

With respect to the 35 U.S.C. § 102 rejection of the claims, Appellants point out that the BIOS of Hester contains a set of instructions and uses interrupt calls to perform an action (brief, page 12). Appellants further assert that Hester's BIOS, although it may include something that can be classified as data, is not a "configuration data structure," as recited in the claims (id.). Additionally, Appellants argue that Hester makes interrupt calls to execute a set of instructions in the BIOS instead of "accessing a storage locus" (brief, page 14).

In response to Appellants' arguments, the Examiner asserts that because configuration data is stored in the ROM along with the BIOS routines, the common configuration is a data structure (answer, page 7). The Examiner further argues that loading the operating system by BIOS is the same as accessing a storage locus (id.).

Appeal No. 2005-2147
Application No. 09/665,214

A rejection for anticipation under section 102 requires that the four corners of a single prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. See Atlas Powder Co. v. Ireco Inc., 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

After reviewing Hester, we agree with Appellants' assertion that the BIOS cannot be equated to the claimed "common configuration data structure." Data structures have specific relational requirements that is not shown to be present in the BIOS which may merely include some sort of data stored in the ROM. On the other hand, Hester discloses 16 Bit BIOS interrupt calls that are supported under 32 Bit applications (col. 2, lines 15-20). As argued by Appellants (brief, page 14), these interrupt calls are intended to "get the attention" of some portion of a computer system (col. 1, lines 53-54) and are not "attempts to access a storage locus."

Therefore, what the Examiner characterizes in Hester as the data structure that attempts to access a first storage locus is merely an interrupt call and a set of instructions that may

Appeal No. 2005-2147
Application No. 09/665,214

some stored data and cannot read on the "configuration data structure" and the claimed method steps. Thus, Hester does not anticipate the claimed subject matter and the 35 U.S.C. § 102 rejection of claims 1, 2, 5, 6, 8, 9, 11-13, 15, 16, 18, 19, 21, 24-26, 28-35 and 37-39 over Hester cannot be sustained.


With respect to the 35 U.S.C. § 103 rejection of the remaining claims, the Examiner modifies Hester by relying on Richman for disclosing the use of a registry for redirecting calls and indicating compatible links (answer, page 6). However, in discussing these modifications, the Examiner has pointed to no additional teaching that would have overcome the deficiencies of Hester as discussed above with respect to the independent claim 1. Therefore, the 35 U.S.C. § 103 rejection of claims 3, 4, 7, 10, 14, 17, 20, 22, 23, 27, 36 and 40 over Hester and Richman cannot be sustained.

Appeal No. 2005-2147
Application No. 09/665,214

CONCLUSION

In view of the foregoing, the decision of the Examiner rejecting claims 1, 2, 5, 6, 8, 9, 11-13, 15, 16, 18, 19, 21, 24-26, 28-35 and 37-39 under 35 U.S.C. § 102 and rejecting claims 3, 4, 7, 10, 14, 17, 20, 22, 23, 27, 36 and 40 under 35 U.S.C. § 103 is reversed.

REVERSED



ERROL A. KRASS
Administrative Patent Judge

Gerry Smith
JERRY SMITH
Administrative Patent Judge

BOARD OF PATENT

APPEALS AND

INTERFERENCES


MAHSHID D. SAADAT
Administrative Patent Judge

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Appeal No. 2005-2147
Application No. 09/665,214

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